

STANDARDS COMMITTEE

18th June 2008

LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS – STATUS REPORT

Purpose of Report

1. This report provides an update of Ombudsman Complaints resolved, within the 12 month period between July 2007 and June 2008.

Case Summaries

2. The following case summaries are complaints which have been investigated and resolved with the Local Government Ombudsman's. These cases are now closed.

Case 1 – Adult Care Services

The complainant stated that the Council had unreasonably withdrawn care services from him. He further commented that as a result of this he could not find voluntary help or afford to purchase the assistance which he required.

As part of a policy change in 2006, the Council revised its eligibility criteria in May of the same year. Legislation stated that local authorities were allowed to take its financial position into account when setting the eligibility criteria, which also applied to the revision concerning any criteria. At the time the Social Services budget was under particularly pressure.

As a result of the revision, services were reviewed to establish whether eligibility criteria was still being met.

The complainant's needs were reviewed in preparation for this change. The complainant was contacted by officers to discuss current needs and future eligibility. After this meeting was held, it was identified that the complainant's needs were not substantial and that his independence was not at risk. Officers used a set framework to determine eligibility.

The complainant was offered information regarding assistance at a further meeting. He was provided with details about agencies which could provide private care. Support was also offered with arranging these services. The complainant was also offered a new financial assessment, with regard to ensuring that his benefits were maximised.

The Ombudsman took a view on two separate decisions made by the Council. First of all the changes to the eligibility criteria and secondly that under those changes, the complainant had not qualified for services.

The Ombudsman concluded from the evidence provided that the Council had followed procedures correctly and made its decision in the right way. It was further stated that there was nothing to suggest that the Council would not reassess the complainant's needs if his health or mobility deteriorated. But that it was understood that the Council consider whether provision could be funded by the complainant, before stepping in.

The complaint was recorded as no maladministration.

Case 2 - Adult Care Services

The complainant stated that the Council had not given proper consideration to the motives of his mother-in-law in transferring a property to her son and daughter. The complaint further stated that as a result of this action, the Council was unfairly seeking costs in consideration of his mother-in-law's care.

In 2006 the complainant's mother-in-law moved into a care home due to her deterioration in health. As a result of this her home was sold, which had been transferred into the son's and daughter's names two years previously. The aim of selling the house was to pay for the care fees.

The complainant's own solicitor advised that his mother-in-law should not be liable for those fees and contacted the Council to discuss the matter. Following several exchanges by letter, the Council did not come to the same conclusion, so the complainant's appealed to the Assistant Director, responsible for Adult Care services. The complainant stated that the decision was that his mother-in-law was responsible and was informed that this was a deprivation of assets.

There was some discussion about where this issue was best addressed. One view was that this issue could not be considered through the Council's complaints procedure because it was not about provision to a service user. It was about financial arrangements for that provision. Concerns were also raised around whether review panel members would have enough experience to understand points of case law. Clarification was sought by the Ombudsman who confirmed that the panel need only consider whether there was a clear intent to deprivation of assets.

The Ombudsman concluded that the decision not to offer the complainant the opportunity of addressing these issues through the complaints procedure, was maladministration. The Ombudsman felt that the complainant should have these issues discussed before an independent review panel, following an investigation of those facts through the complaints procedure. Those findings and any recommendations would then be reported to the Director of Social Services who could then take a reasoned view.

It was agreed that the Council would offer to do this, after a second stage investigation had been carried out.

The complaint was recorded as a local settlement.

Case 3 – Adult Care Services

The complaint stated that the Council unreasonably refused to apply the 12 week property disregard to the complainant's parents.

In January 2007, the complainant's parents moved into a retirement home in Weston-Super-Mare. Their house was put up for sale whilst they made rent payments to the retirement home. The complainant stated that if the local Council had been informed, his parents would have been assessed and on satisfaction of this assessment, would have put in place the 12 week property disregard scheme, which would have subsidised their rent for 12 weeks.

When the complainant's father fell ill, he moved his parents to a residential home in Wiltshire. The home contacted the Council to have their new residents assessed. On assessment it was found that a more suitable home could be found, which was agreed by all parties and where the complainant's parents have since been living.

The Council informed the complainant that as they had come from North Somerset jurisdiction it would be that authority who would bear the financial responsibility. The complainant stated in his complaint that at first this was agreed, but that on consulting their records, North Somerset had not heard of his parents and that by default Wiltshire had become the responsible authority to apply the disregard.

The complaint further stated that whilst this Council was willing to recognise some of the financial responsibility, a loan had now been sponsored against their property. The 12 week disregard was not applied.

Because of the jurisdiction issue between the two Councils, the Ombudsman's office contacted the Department of Health for advice. Amongst the guidance received was the following information:-

'The 12 week property disregard applies from the moment that the resident is admitted to permanent residential accommodation provided by a local authority under Section III of the National Assistance Act 1948. The disregard should apply from the moment the authority provides permanent residential accommodation, irrespective of whether the resident was already in a care home as a self-funder'

On receipt of this guidance, whilst it was not viewed as conclusive, the Council took the decision that this discussion was best held between the two authorities and made the offer to apply the 12 week rule. The complainant's parents were also refunded.

The complaint was recorded as no or insufficient evidence of maladministration

Case 4 – Education

The complaint stated the Council failed to consider revising the closing date for receipt of school admission application forms in light of Gloucestershire County Council's decision to move the deadline until after the result of grammar school examinations were known.

The complainant's lived 2 miles from Gloucestershire and intended to apply for schools in both Gloucestershire and Wiltshire with regard to their daughter. They stated that the application process in Gloucestershire meant that the residents in this county would have grammar school examination results before having to submit their application to the Gloucestershire County Council. The complainants stated that as they were resident in Wiltshire they had to adhere to its admission policy, which meant having to submit their application form before grammar school examination results were known.

On raising this issue with the Council, the complainants were informed that they were treated on a fair and equal basis alongside other parents. The complainants stated that as they lived so close to the Gloucestershire border, the choice of school would be influenced by this and felt they were being disadvantaged compared to the Gloucestershire parents.

The Council stated that the consultation period on the proposed arrangements for admissions in 2008 began on 17th October 2006. Gloucestershire County Council responded to that on the 11th December indicating that it was happy with our arrangements. On 24th January 2007 the Admissions Forum confirmed the date applications should be submitted. The admissions scheme for the 2008 intake was agreed on 27th February 2007. The revised School Admissions Code came into force on 28 February.

The Ombudsman commented that it would appear that Gloucestershire County Council amended its arrangements following that date. The issues raised in this complaint were raised at a subsequent meeting of the Admissions forum and the request to make alterations to Wiltshire's admissions arrangements was refused.

The Ombudsman concluded that this Council could not have reasonably been aware of the changes that Gloucestershire County Council intended to make to their admission arrangements. The Ombudsman further stated that it could not criticise Wiltshire for not taking into account the decision of another authority, when there was no evidence to suggest that it had been aware of the changes and subsequently did not have time to amend its own admission arrangements.

The complaint was recorded as Ombudsman's discretion.

Case 5 – Education

The complaint stated that the School Admissions Appeal Panel did not give proper consideration to the complainant's case for admission.

Specifically that the Appeal Panel had not given proper consideration as to whether it was unreasonable to refuse a place given the circumstances of the family. That the

questioning by panel members was felt to be aggressive and that it concentrated on the role of the mother as a governor at the school, instead of considering the evidence. Also that the venue where the appeal was held was imposing and unfriendly and did not comply with the requirements of the Code of Practice.

In reviewing the issues raised by the complainants, the Ombudsman commented that as far as the evidence indicated, the Code of Practice has been correctly carried out with one exception.

Papers for an appeal must be sent to the Appeal Panel and parents at least seven calendar days before the hearing. It was confirmed that although the papers had been sent out a clear week ahead, consideration had not been given to 2 bank holidays which fell during this period.

For this reason and to ensure a fair and open approach to appeal hearings, the Council agreed to a fresh hearing being arranged.

Although the offer of a fresh appeal resolved the complaint as far as the parents were concerned, a note of caution was made. The Ombudsman commented that having seen the arguments of the parents and that of the Council, it would be possible that a fresh appeal panel would reach the same decision without maladministration. He further commented that the first appeal could therefore have reached the right answer but by the wrong route. The complainants were asked to consider this before deciding whether a fresh appeal was the way to go for them.

The complaint was recorded as a local settlement

Case 6 – Children and Family Services

This complaint was made on behalf of the complainant by his solicitors. The solicitors summarised the complaint as a failure to educate their client. It is worth noting that these events took place approximately 10 years ago, which was acknowledged by the Ombudsman.

The solicitors stated that the Council had failed to act under its duty as Corporate Parent in that it:-

- Failed to provide a Statement of Special Education Needs
- Failed to provide an appropriate education for a prolonged period
- Failed to maintain adequate records or to update care plans
- Failed to work in partnership with other agencies
- Did not provide regular visits from the social worker
- Delayed in providing the Stage 2 report

This was an extremely complex case and it involved a number of different agencies who were working with the complainant at the time he was in care. It was clear in the investigation that the complainant was let down and the Council's role as Corporate Parent was not as effective as it could have been.

In recognising its failings the Council was trying to be as helpful to the Ombudsman and had identified several files concerning the complainant. The Ombudsman was invited to come and review the files and interview officers as appropriate.

However before further discussion could take place the solicitors withdrew from the complaints investigation with a view to issuing legal proceedings, claiming loss of potential earnings by their client as a result of not receiving the right provision for his needs.

The Ombudsman subsequently closed the investigation as there is no jurisdiction in light of legal proceedings being issued.

The complaint was recorded as a local settlement

Case 7 – Education

The complaint stated that the Council had failed to make the occupational therapy provision as set out in the complainant's son's statement of Special Educational Needs, between September 2006 and June 2007. That it also failed to take adequate steps to make hydrotherapy available during July 2006 to October 2007.

The Council confirmed that due to some procedural errors around casework occurring, combined with the extended period of absence due to the ill health of the Education Officer assigned to this case, some of the occupational therapy was not provided during the aforementioned period.

As a way of resolving the missed therapy, the Ombudsman suggested to the Council that further provision could be offered. The health team at Wiltshire PCT were asked for their view on this and it was felt that the complainant's son was now following a programme suitable to his needs and that to add additional time to it, would not benefit him and would take time from his other school work. The Ombudsman therefore proposed compensation payment of £400, which broke down into £300 of missed therapy and £100 time and trouble payment.

With regards to the hydrotherapy being missed, this was due to the long term closure of the pool which the complainant's son attended. The complainant stated that this was the most physically beneficial therapy available to her son and that the Council should have made enquiries about alternative provision elsewhere.

The Ombudsman advised the complainant that the swimming pool belonged to a school and that matters which happen within a school, were outside his jurisdiction. However he did state that he can investigate the provision for a child's statement made by the school, because it is the LEA which is responsible for ensuring that suitable provision is in place.

The long term closure of the swimming pool was not foreseen and was expected to reopen within 4-6 weeks. Unfortunately further health and safety problems were identified as well as a planned closure to extend the changing rooms.

The Council confirmed that it had tried to identify other suitable places for the complainant's son but this was not possible during the time period. The Ombudsman concurred that this was a reasonable explanation given all the circumstances.

The complaint was recorded as a local settlement

Case 8 – Transport & Highways

The complaint was made by the complainant on behalf of a group of residents in Chippenham. The complaint was that the Council had wrongly insisted that the residents should provide a hard surface and dropped kerb on their private road bordering the public highway. The complainant states that the residents cannot afford to do this and that Council maintain the strip of land because it has adopted the highway. The complainant also stated that the Council has not responded to correspondence or a request for a meeting.

The Council stated that as far as it was aware, there was no evidence that the area in question had been adopted by the Council after the private road was first constructed. If this has been the case, the developer would have been required to construct it to Highways Act standards and the Council would have had responsibility. It crossed the verge of the highway and the Council has highway rights over about 4-5m of the verge. The Ombudsman therefore concluded that the council had a right to insist that the access point was maintained to a reasonable standard.

The Council was first alerted to this matter when a request was made for advice as to how to make access safer. The surface between the private road and the public highway was in a poor condition.

The Ombudsman was informed that the residents were initially going to ask the Council to adopt the road, until it was pointed out that it would have to be brought up to a reasonable standard before adoption would be considered.

Officers did suggest that the use of a mirror to assist residents manoeuvring onto the highway, could only be permitted by the Secretary of State. One suggested solution was to consider replacing some leylandii hedging with a fence.

It was whilst seeking planning permission for this, that it was discovered that the Council owned a 1metre strip of the bellmouth. This strip was required to be tarmacked.

Around the same time as planning permission was being sought, the residents decided to add a layer of shingle along the private road to improve the surface. However this posed a potential danger to both residents and other users, as the shingle was migrating across the road surface and could have been capable of causing an accident. The Council therefore had to take action as doing nothing may have lead to acquiring responsibility through negligence.

The Ombudsman concluded that it could not confirm whether the Council does legally have responsibility for the bellmouth and to do this would be a matter for the courts. The complainants were advised of this.

The Ombudsman further commented that the Council appeared to offer advice as to how the residents might seek an appropriate resolution at the lowest cost.

The complaint was recorded as no or insufficient evidence of maladministration.

Additional Ombudsman Information

4. The Local Government Ombudsman is working to get the 2007/2008 Annual Report out to all authorities by the end of June.

STEPHEN GERRARD
MONITORING OFFICER

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The following unpublished documents have been relied on in the preparation of this Report:

None